

MAR 21 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

GUY PRIVAT TAPÉ and
LOU NAZIE RAYMONDE TOTO,

Petitioner,

v.

ALBERTO R. GONZALES, ** Attorney
General,

Respondent.

Nos. 03-70097 and 03-73273

Agency No. A73-124-565

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted February 17, 2006
San Francisco, California

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Credible evidence supports the decision of the Board of Immigration Appeals (“BIA”) to affirm the Immigration Judge’s (“IJ”) denial of asylum and withholding of removal to Petitioners. The IJ reached this conclusion after determining that

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** Alberto R. Gonzales is substituted for his predecessor, John Ashcroft, as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

Petitioner Guy Tapé (“Tapé”) lacked credibility with regard to his 1992 arrest, detention, and escape based largely on the implausibility of his actions after the escape. In particular, the IJ found it implausible that, having gone immediately to his government employer, the employer—a member of the party allegedly persecuting the Petitioner—would let him simply walk off knowing that he had just escaped from prison. An IJ’s determination of credibility is valid if it is based on specific, cogent common-sense reasons why the petitioner’s claims are implausible. *See Jibril v. Gonzales*, 423 F.3d 1129, 1135 (9th Cir. 2005).

The remainder of the incidents, which the IJ found to be credible, are insufficient to support a grant of asylum or withholding of removal. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483-84 (1992). Co-petitioner Lou Toto’s asylum and withholding claims also fail, as they are based entirely upon the believability of Tapé’s application.

The BIA did not abuse its discretion by denying Petitioners’ motion to reopen based on changed circumstances where most of the evidence supporting the Petitioners’ motion was readily available at the time of their removal hearing before the IJ and the remaining evidence consists of news reports and allegedly threatening e-mail messages. The e-mail messages were not clearly addressed to Tapé and do not

contain specific threats. Similarly, the news reports do not have any direct bearing on Tapé's situation.

Petitioners' claims regarding their illnesses cannot be considered by this court because Petitioners did not raise them before the IJ or the BIA and, therefore, have not exhausted their administrative remedies. *See Liu v. Waters*, 55 F.3d 421, 424 (9th Cir. 1995).

PETITION DENIED.